AMO REPORTS 84-7

RESPONSE TO BILL 102: AN ACT RESPECTING THE SALE OF LANDS FOR ARREARS OF MUNICIPAL TAXES

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
NOVEMBER 1984

86-02229/

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

To the Municipal Clerk:

Please circulate this Report to the members of council and to the staff of your municipality. Additional copies are available at $2.50 each from the Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 902, Toronto, Ontario M5J 1V6

AMO RESPONSE TO BILL 102, AN ACT RESPECTING THE SALE OF LANDS FOR ARREARS OF MUNICIPAL TAXES (REVISED BILL 138)

TABLE OF CONTENTS

	Page
INTRODUCTION	1
AMO'S REQUESTED CHANGES TO BILL 138	1
BILL 102: THE MAJOR CHANGES FROM BILL 138	2
BILL 102: ADDITIONAL CONCERNS NOT ADDRESSED	5
CONCLUSIONS AND RECOMMENDATIONS	6
APPENDIX 1: RESOLUTIONS	8
APPENDIX 2 COMMENTS FROM THE RURAL SECTION (ROMA) EXECUTIVE COMMITTEE	9

"AMO Report 84-7" was submitted to the Honourable Claude Bennett, Minister of Municipal Affairs and Housing, on November 21, 1984.

AMO RESPONSE TO BILL 102, AN ACT RESPECTING THE SALE OF LANDS FOR ARREARS OF MUNICIPAL TAXES (REVISED BILL 138)

INTRODUCTION

On April 13 1984, the AMO Executive Committee considered the matter of Bill 138, An Act respecting the Sale of Lands for Arrears of Municipal Taxes. After careful review of the proposed legislation by Sections of the Association, the Executive Committee submitted its comments to the Minister of Municipal Affairs and Housing for his consideration in a letter dated April 17, 1984 from Marlene Catterall, President, to the Honourable Claude Bennett, Minister.

Bill 138 has since, however, been revised and on June 12, 1984, Bill 102, an Act respecting the Sale of Lands for Arrears of Municipal Taxes, received First Reading in the Legislature.

The purpose of this summary is to compare the changes incorporated in Bill 102 with the comments and request for changes made by the AMO Executive Committee in the April 17th letter to the Minister. Insofar as there are additional changes made in the proposed legislation which go beyond the requests made by the Association's Executive Committee, or omissions which the Association would like to see addressed, such comments are included in the sections of this report.

AMO'S REQUESTED CHANGES TO BILL 138

Following the thorough review of Bill 138 by the Sections and Fiscal Policy Committee of the Association, the AMO Executive Committee recommended three changes to the proposed legislation which it submitted to the Minister of Municipal Affairs and Housing for consideration.

First, the Executive Committee endorsed a motion stating that Bill 138 should be amended to provide that where agreement is reached between a lower-tier municipality and an upper-tier municipality, that the upper-tier municipality assume on behalf of the lower-tier municipality, the function of tax sale. The Executive Committee maintained that permissive delegation of such responsibilities represents a more practical and economical means of government administration.

Second, the Executive Committee endorsed a motion that Bill 138 be amended to provide that land may be offered for sale either by public tender or

by public auction at the discretion of the municipality. It was felt that municipalities should be permitted to determine the most appropriate method of sale and that provisions for both a public tender process and an auction process should be included in the Act.

Third, the Executive Committee also endorsed a motion stating that Bill 138 should be amended to provide that a municipality be entitled to a commission of 10 per cent of the selling price of land disposed of under the proceedings of tax sale. A primary concern was that municipalities be reimbursed for the costs incurred in the process of tax sale. The Minister was informed of a particular concern pertaining to the disposition of lots (apparently thousands exist) which were created during the 1970's when many individuals and corporations took advantage of a loophole in the Planning Act. Recently there have been a number of court rulings indicating that these lots may not have clear title. As a result, such lots cannot be conveyed. Under the provisions of Bill 138, it could be possible for the owners of these lots to default on taxes in order to force a tax sale. Once a tax certificate is issued, clear title would be obtained, thus allowing the lots to be conveyed to other parties. Because many of these lots do not front on a public road, development of these lots would increase demands for municipal services which would be most expensive to provide.

BILL 102: THE MAJOR CHANGES FROM BILL 138

Responding to the comments and suggestions made for changes to the proposed tax sale legislation (Bill 138), the Ministry of Municipal Affairs and Housing, through its Local Government Organization Branch, has incorporated many of these suggestions into Bill 102, the proposed legislation for the Municipal Tax Sale Act, 1984 which received First Reading on June 12, 1984. Seven major changes have been included in Bill 102, some of which address the concerns expressed by AMO in its communication with the Minister of April 17, 1984.

The following are the major changes incorporated in Bill 102:

(1) To provide for a county or regional role by agreement with the local municipality.

The Bill will permit local municipalities to delegate the collection of tax arrears to the upper tier municipalities in which they are situated (section 17). This was recommended by AMO.

(2) To leave registration of eligible property to the discretion of the treasurer.

The treasurer of a municipality to which any part of tax arrears are owed on the 1st day of January in the third year in respect of improved land or in the second year of vacant land following the year in which the real property taxes become payable may commence proceedings by registering a tax arrears certificate in the proper land registry office (section 3(1)).

Section 3(1) of Bill 138 stated that, "...the treasurer shall prepare and register a tax arrears certificate in the prescribed form against the title of the land". The substitution of the word "may" for the word "shall" in Bill 102 has given rise to some misgivings with regard to the support of the proposed legislation.

The County and Regional Section of the Association has endorsed a resolution requesting that the Ministry of Municipal Affairs and Housing change Section 3 (1) of Bill 102 reducing the discretionary power which the proposed legislation affords to the treasurer with regard to the registration of eligible property (Appendix 1).

Because of the concerns expressed to the Association with regard to this change, which increases the discretionary power of the treasurer and raises the possibility of inconsistencies in the practice of tax sale registrations, which could pose a future problem, the Association has reviewed the resolution from the County and Regional Section and endorsed the following:

The Association requests that the Minister of Municipal Affairs and Housing amend Section 3 (1) of Bill 102 to read as follows:
"

"the treasurer shall, unless otherwise directed by council, prepare and register a tax arrears certificate in the prescribed form against the title to the land with respect to which the tax arrears are owing."

The Association agrees with the concern expressed by the County and Regional Section in its resolution pertaining to the issue of mandatory registration. It is felt that there should be incorporated in the proposed legislation some degree of discretionary power, but that such power should more appropriately rest upon the elected representatives on local council.

Registration, therefore, ought to be mandatory unless the treasurer is directed otherwise by council. Any inconsistency in the practice of tax sale registration that should arise will have been approved by council,

thereby, making local councils ultimately accountable for any deviation from the practice of mandatory registration.

(3) To make a distinction between vacant and improved land.

The treasurer of a municipality to which any part of tax arrears are owed on the 1st day of January in the third year in respect of improved land or in the second year in respect of vacant land following the year in which the real property taxes become payable may commence proceedings by registering a tax arrears certificate in the proper land registry office (section 1(2)).

(4) To allow municipalities to establish a scale of fixed administrative fees as part of the cancellation price.

The treasurer shall pay the proceeds of sale, minus the cancellation price, into the District Court together with a statement in the prescribed form outlining the facts under which the payment into court is made (section 10(2)). The court shall determine all of the entitlements to receive payments out of the proceeds of sale (section 10(4)). Where no person makes an application for entitlement within the one-year period referred to in section 10 (3), the amount paid into court under section 10 (2), shall be deemed to be forfeited to the municipality and the municipality may apply to the District Court for payment out of the amount that was paid in (section 10(5)). Money received by a municipality under section 10(5) is to be paid into the general funds of the municipality.

The Executive Committee expressed its concern to the Ministry that municipalities be reimbursed for the costs incurred in the process of tax sale. Allowing municipalities to establish a scale of fixed administrative fees as part of the cancellation price falls short, however, of the Executive Committee's endorsement of a motion stating that Bill 138 be amended to provide that a municipality be entitled to a commission of 10 per cent of the selling price of land disposed of under the proceedings of the tax sale.

The Rural Section (ROMA) and the County and Regional Section of the Association support the changes in Bill 102 allowing municipalities to establish a scale of fixed administrative fees as part of the cancellation price. They do not support the Association's Executive Committee's motion calling for a commission of 10 per cent of the selling price of land disposed of under tax sale proceedings. AMO, through its Executive Committee, requests that the Minister of Municipal Affairs and Housing amend Bill 102 to include a provision which would entitle municipalities to a commission of 10 per cent of the selling price of land disposed of under tax sale proceedings.

(5) To restrict the requirement for a second notice of the certificate to those who received the first notice.

The treasurer, 280 days after the registration of the tax arrears certificate, will be required to send a second notice to parties who were entitled to receive a notice under section 4 warning them that the land will be sold unless the cancellation price is paid before the expiry of the one-year period following the registration of the tax arrears certificate (section 9(1)). Bill 138, by contrast, required that the treasurer, 301 days after the registration of the tax arrears certificate, would be required to send a second notice to all interested parties warning them that the land will be sold unless the cancellation price is paid before the expiry of the one-year period following the registration of the tax arrears certificates (section 9(1)).

This change will decrease the burden of paperwork for the treasurer and result in increased economy and efficiency as a result.

(6) To allow the sale to be conducted either by public tender or by public auction.

A sale will be by public tender or public auction conducted in accordance with the regulations made under the Act and a tax deed must be registered in the name of the successful purchaser or, if there is no successful purchaser, the land will vest in the municipality (section 9(3)). This was previously recommended by AMO.

(7) To make the tax deed issued to a successful purchaser final and binding when registered.

The registration of the tax deed or notice of vesting, vests the land in the successful purchaser or the municipality, as the case may be, free and clear of all interests other than those of the Crown in right of Canada or in right of Ontario, easements and restrictive covenants that run with the land and any interest or title acquired by adverse possession by abutting owers (section 9(5)).

This change does not appear to pose a problem for it merely clarifies further the changes made in section 9(5) of Bill 138, which was not commented on by AMO in its response to the Minister.

BILL 102: ADDITIONAL CONCERNS NOT ADDRESSED

The Association, in its review of Bill 102, has noted that the Ministry

continues to inhibit municipalities from collecting other amounts owing in a like manner as taxes. It is noted that there is in excess of sixty provisions in the existing legislation for adding amounts to the municipal tax collector's roll. Many of these charges should be accorded the same status as taxes.

The Association requests, therefore, that the Ministry undertake a thorough review of existing legislation and consider making the necessary changes to the various provisions of existing legislation to clearly designate the amounts which should be treated as taxes.

CONCLUSIONS AND RECOMMENDATIONS

In general, Bill 102 represents a favourable response from the Ministry of Municipal Affairs and Housing to the comments and concerns expressed by AMO regarding aspects of Bill 138. The Association continues to support the principle of adopting a single, uniform system to deal with the sale of lands for tax arrears.

One change made to Bill 102, however, has caused some concerns within AMO. This concern relates to the change made to section 3 (1) which places the registration of an eligible property at the discretion of the municipal treasurer. The Association has adopted the position that the registration of eligible properties ought to be mandatory, unless the treasurer is directed otherwise by local council.

1. **AMO recommends, therefore, that the Minister of Municipal Affairs and Housing amend section 3 (1) of Bill 102 to read as follows:**

   "the treasurer shall, unless otherwise directed by council, prepare and register a tax arrears certificate in the prescribed form against the title to the land with respect to which the tax arrears are owing."

In its comments to the Ministry regarding Bill 138, the AMO Executive Committee requested that the proposed legislation be amended to provide that a municipality be entitled to a commission of 10 per cent of the selling price of land disposed of under tax sale proceedings. It is AMO's concern that municipalities be reimbursed for the costs incurred in the process of tax sale. Changes to Bill 138 incorporated in Bill 102 now allow municipalities to establish a scale of fixed administrative fees as part of the cancellation price. Bill 102 must be made more permissive to allow municipalities the option of either: (1) establishing a scale of fixed administrative fees as part of the cancellation price or (2) allowing municipalities to be entitled to

a commission of 10 per cent of the selling price of land disposed of under the proceedings of tax sale.

The Association's Executive Committee maintains that a commission of 10% of the selling price of land disposed of under the proceedings of tax sale is necessary for municipalities to fully offset the costs incurred in the process of tax sale.

2. As a result, AMO again requests the Minister of Municipal Affairs and Housing to reconsider the following motion:

> **"that Bill 102 be amended to provide that a municipality be entitled to a commission of 10 per cent of the selling price of land disposed of under the proceedings of tax sale."**

The Association notes that existing legislation continues to inhibit municipalities from collecting other amounts owing in a like manner as taxes. AMO recognizes that there is in excess of sixty provisions in the existing legislation which allows the addition of amounts to the municipal tax collector's roll. Many of these charges should be accorded the same status as taxes.

3. AMO requests that the Minister of Municipal Affairs and Housing review this matter and consider making the necessary changes to existing legislation to clearly designate which of these amounts should be accorded the same status as taxes.

APPENDIX 1

RESOLUTIONS

AL-1

AMENDMENT TO BILL 102, THE MUNICIPAL TAX SALES ACT, 1984 REGARDING REGISTRATION OF TAX ARREARS CERTIFICATE

From: County and Regional Section of AMO

Be it resolved that the Minister of Municipal Affairs and Housing be petitioned to amend Section 3 (1) of Bill 102, An Act respecting the Sale of Lands for Arrears of Municipal Taxes, to read:

> "the treasurer shall, unless otherwise directed by council, prepare and register a tax arrears certificate in the prescribed form against the title to the land with respect to which the tax arrears are owing."

AL-7

AMENDMENT TO BILL 138, THE MUNICIPAL TAX SALES ACT REGARDING REGISTRATION OF TAX ARREARS CERTIFICATE ON VACANT AND IMPROVED LAND

Be it resolved that the Minister of Municipal Affairs and Housing be requested to amend Section 3(1) of Bill 138, the Municipal Tax Sales Act to require that vacant land shall be registered where taxes are owing on January 1st in the second year following that in which they are imposed and that improved land shall be registered where taxes are owing on January 1st in the third year following that in which they are imposed;

And further be it resolved that the Minister of Municipal Affairs and Housing be requested to amend Sections 4(1), 9(1) and 11(1) of Bill 138, to delete the notice to assessed tenants.

Section Comment

Large Urban Section: At the 1984 Annual Meeting, endorsed.

APPENDIX 2

COMMENTS OF THE RURAL SECTION (ROMA) EXECUTIVE COMMITTEE

The Bill has been reviewed and the ROMA Executive Committee is indeed pleased to find the large majority of its recommendations, for revision to former Bill 138 and Bill 102, have been incorporated in the proposed legislation.

Several items remain outstanding however, and others result from the introduction of new selections.

The following additional recommendations were supported by the Rural Executive Committee of AMO:

Section 3(1) - Delete from the first line of the last paragraph the word "may" and insert in lieu thereof the word "shall".

Rationale - It is felt that registration should be mandatory. It relieves the council or the treasurer, as the case may be, from any conflict in deciding whom the procedure shall be initiated against and when - removes the occasion for accusations of discrimination.

Section 4(1) - Delete in the first line the word "sixty" and insert in lieu thereof the word "ninety".

Rationale - With the change to mandatory registration, it will provide the treasurer with some additional time at the beginning of the year, when the workload is heavy, to complete notice requirements.

Section 4(5)(b) - Insert in the first line immediately following the words "has expressly waived" the words "in writing".

Rationale - Waiver notice is a serious item. To eliminate any future potential for conflict, it should be in writing.

Section 5(1) - Delete in its entirety and insert in lieu thereof, "After the expiry of the one-year period the process for sale of the land shall be vested in the municipality in accordance with section 9, but any person may have the tax arrears certificate

cancelled by paying the municipality, at any time up to and including the day of the sale, the cancellation price as of the date the payment is tendered".

Rationale - The municipality is interested in recovering its taxes and costs; if payment were to be tendered at the last minute, it should be accepted as if to take the property to sale. This could result in the owner having to purchase his property at a substantial price when it might have been free of encumbrance. Perhaps that sort of penalty is an earned one on the part of the owner, but it was deemed to be unnecessarily harsh.

Section 8 - Delete in its entirety.

Rationale - Extension agreements are again an item which will raise accusations of discrimination. With mandatory registration and the opportunity for redemption up to and including the day of sale, it is felt this additional leeway is not a desirable component of the process.

PUBLICATIONS ISSUES IN THE "AMO REPORTS" SERIES

82-1 Adult Residential Facilities

82-2 Response to Bill 159 - An Act to Revise the Planning Act
Appendix to "AMO Reports 82-2": Clause by Clause Review of Bill 159 - An Act to Revise the Planning Act ($4.00)

82-3 Property Taxation of Farms and Managed Forests

82-4 Response to the Provincial Discussion Paper on Wetland Policy

82-5 Provincial-Municipal Grants for Children's Services

82-6 Municipal Lot Levies: An Update

82-7 Rent Review in Ontario

82-8 Report of the Section 86 Working Group

82-9 Report on Amendments to the Police Act

82-10 Bill 115 - An Act to Amend the Retail Sales Tax Act

82-11 Bill 11 - An Act to Provide for the Licensing of Businesses by Municipalities

82-12 Report on Amendments to the Fire Departments Act

82-13 Response to Bill 138 - An Act Respecting the Protection of the Health of the Public

82-14 Response to the Housing Initiatives Contained in the 1982 Ontario Budget

82-15 Foster Care: Proposed Standards and Guidelines for Agencies Placing Children

82-16 Bill C-61 - The Young Offenders Act: Implications for Municipalities

82-17 Report on Procedures with Respect to the Election of the Warden of a County Government

82-18 Canadian Shield Disposal Sites and Nuclear Fuel Waste Management

82-19 Response to Residential Renovation - Proposed Part XI of the Building Code

82-20 Response to Bill 159 - An Act to Revise the Planning Act - as revised by the General Government Committee of the Legislature

82-21 Response to the Draft Guidelines for the Development of Policies on Community Improvement

82-22 Bill 179 - An Act Respecting the Restraint of Compensation in the Public Sector of Ontario and the Monitoring of Inflationary Conditions in the Economy of the Province

83-1 Response of the Association of Municipalities of Ontario to the 1983 Provincial Transfer Payment Announcement

83-2 Affordable Housing - An Overview

83-3 Response to the Ministry of Energy Discussion Paper: Wood Heat Inspection Safety Program for Ontario

83-4 Response to the Discussion Paper on Ontario Carbonated Soft Drink Container Regulations

83-5 Reform and Revision of Conservation Authorities in Ontario

83-6 Response to The Children's Act

83-7 Response to the Provincial Government Discussion Paper Entitled Municipal Cost-Sharing and Unconditional Grants

83-8 Response to the Ontario Public Library System Consultation Paper: A Foundation for the Future

83-9 Response to Blueprint for Change: The Next Ten Years, Interim Report of Dr. G.F. Heseltine

83-10 Response to the Study of Residential Intensification and Rental Housing Conservation, Part 1: Detailed Summary of Findings and Recommendations

83-11 Response to a Ministry of the Environment Discussion Paper: Guidelines for the Regulation and Siting of Mobile PCB Destruction Facilities
83-12 Response to the Ministry of Revenue's Proposals on Property Tax Exemptions for Non-Profit Community-Based Organizations
83-13 Municipal Energy Management Programs: Future Policies and Program Directions
83-14 Response to the Housing Initiatives Contained in the 1983 Ontario Budget, as announced, August 4, 1983
83-15 1984 Guidelines for Municipal Bargaining and Establishment of Compensations packages
83-16 Provincial Flood Plain Policies - The AMO Perspective
83-17 Response to the "Blueprint for Waste Management"
83-18 Response to the First Report on Family Violence: Wife Battering, A Report of the Standing Committee on Social Development
84-1 Response to the Proposed Provincial Mineral Aggregate Resource Planning Policy
Addendum to AMO Report 84-1
84-2 Response to the Off-Road Vehicles Act
84-3 Energy Contingency Planning for Municipal Operations
84-4 The Ontario Environmental Assessment Act and Its Cost Impact on Municipalities
84-5 Services for the Elderly - A Municipal Perspective
84-6 Response to the Report of the Flood Plain Review Committee on Flood Plain Management in Ontario
84-7 Response to Bill 102: An Act Respecting the Sale of Lands for Arrears of Municipal Taxes
84-8 Response to Bill 93: An Act Respecting Public Libraries

Copies of all the reports in this series are available at $2.50 each, (except as noted) for postage and handling, prepaid, from: Publications Centre, Association of Municipalities of Ontario, 100 University Avenue, Suite 902, Toronto, Ontario, M5J 1V6. Please make cheques payable to the Association of Municipalities of Ontario.

For a list of AMO reports prior to 1982, please contact the AMO office.